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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,358

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EXAMINER

ASDJODI, MOHAMMAD REZA

ART UNIT

PAPER NUMBER

1796

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,358	Applicant(s) CORNELIUS ET AL.	
	Examiner MOHAMMAD R. ASDJODI	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-8, 11-14, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Guertechin (US 5,527,486), as applied to claim 1 above.

Regarding claims 1-6, and 18, De Guertechin teaches a near tri-critical point cleaning compositions comprising: water, as polar solvent, by the amount of 55-95% and also 97%; [6: 24-26, 5: 17-27], amphiphilic agents, such as alkylene glycol alkyl ethers wherein R¹ is a C₄- C₈, and n is 1 to 5, by the amount of 1-23%; [5: 21-23], and non-polar hydrocarbons with more than five carbon atoms (octylactate) by the amounts of 2-10%; [7: 2, 5: 20], wherein the composition is in a single phase; [5: 55-60].

De Guertechin does not explicitly teach the self-induced motility (which is more relevant in study of micro-organisms) of this three component system in equilibrium. The Office realizes that all the claimed effects or physical properties, such as self induced motility, are not positively stated by the reference (or: References). However, the reference teaches all of the claimed reagents, and their equilibrium states specifically. Therefore, the claimed effects and physical properties (self-induced motility due to differences in volatility and vapor pressure of different components) would implicitly be achieved by a composition with all the claimed ingredients. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects with only the claimed ingredients.

Regarding claim 9, on the amount of hydrocarbon (0.05-0.5): "a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected [the claimed product and a product disclosed in the prior art] to have the same properties." *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). [MPEP 2131.03, R6].

Regarding claim 10, De Guertechin teaches a near tri-critical point (abstract) cleaning compositions comprising: water, as polar solvent; [6: 24-26], amphipilic agents; [5: 21-23], and non-polar hydrocarbons; [7: 2, 5: 20].

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De Guertechin does not teach maragoni effect (or self-induced motility) in his composition. Gibbs-maragoni effect (e.g. tears of wine) is caused by factors such as concentration gradient, temperature gradient, density of cumulative and simultaneous combination of these effects. Considering the composition being able to exist in three phases, the maragoni effect is a direct consequence of physio-chemical property of the system. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects with only the claimed ingredients.

Regarding claims 11, 12, and 14, De Guertechin teaches a method of cleaning soiled substrates such as household materials; [3: 36], wherein the composition is in the form of two or three phases in equilibrium; [5: 55-60].

Regarding claims 17, and 19, De Guertechin teaches a cleaning composition comprising short chain hydrocarbon such as isopropanol, electrolytes, and perfume; [10: 45, 46, 62].

Claims 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Guertechin (US 5,527,486), as applied to claim 1, and further in view of Hachmann et al. (US 5,646,105)

Regarding claims 7, and 8, De Guertechin teaches the basic cleaning composition as set forth for claim 1 above.

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De Guertechin does not, explicitly, teach amphophiles such as methyl 2-pyrrolidone and glycol ether of claim 6, where R¹ is a phenyl group. However, Hachmann et al. teach a cleaning composition comprising methyl 2-pyrrolidone and 1-phenoxy propanol; [4: Table, 1: 47]. Hachmann et al. and De Guertechin are analogous art because they are from the same field of endeavour, that of cleaning compositions. At the time of invention, it would have been obvious to a person of ordinary skill in the art to use Hachmann's amphophiles such as methyl 2-pyrrolidone and 1-phenoxy propanol with De Guertechin's composition with the motivation of dissolving the soils as taught by Hachmann et al.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Guertechin (US 5, 527,486), as applied to claim 1, and further in view of Iaia et al. (US 5,499,748).

Regarding claim 13, De Guertechin teaches the basic cleaning composition as set forth for claim 1 above.

De Guertechin does not teach a package associated with his cleaning composition. However, Iaia et al. teach a cleaning composition being delivered in a package (page 1]. Iaia et al. and De Guertechin are analogous art because they are from the same field of endeavour that of cleaning compositions and their packaging. At the time of invention, it would have been obvious to a person of ordinary skill in the art to use packaging of Iaia et al. for composition of De Guertechin with the motivation of proper disposing of compound for the comfort of consumers.

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Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Guertechin (US 5,527,486), as applied to claim 1, and further in view of Vermeer (US 5,624,906).

Regarding claim 15, De Guertechin teaches the basic cleaning composition as set forth for claim 1 above.

De Guertechin does not teach alkylaldonamide in his cleaning composition. However, Vermeer teaches a hygienic cleaning composition comprising: alkylaldonamide; [2: 38]. Vermeer and De Guertechin are analogous art because they are from the same field of endeavour that of cleaning compositions. At the time of invention, it would have been obvious to a person of ordinary skill in the art to use alkylaldonamide of Vermeer in composition of De Guertechin with the motivation of improved foaming, viscosity and clarity of cleaning composition as evidenced by Vermeer.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Guertechin (US 5,527,486), as applied to claim 1, and further in view of Johansson (US 5,64,041).

Regarding claim 16, De Guertechin teaches the basic cleaning composition as set forth for claim 1 above.

De Guertechin does not teach alkyl glucoside (ten or less carbon atoms) in his cleaning composition. However, Johansson teaches a cleaning composition comprising alkyl glucoside of instant claim; [4: 19]. Johansson and De Guertechin are

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analogous art because they are from the same field of endeavour that of cleaning compositions. At the time of invention, it would have been obvious to a person of ordinary skill in the art to use alkyl glucoside of Johansson in composition of De Guertechin with the motivation of improved cleaning properties on hard surfaces as taught by Johansson.

Response to Arguments

Applicant's arguments filed 11/24/2008 have been fully considered but they are not persuasive.

A- In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant case (amended claim 1) the language of claim is refers to a cleaning composition, which is comprising of cited ingredients. De Guertechin's composition is, also, comprising of the same ingredients with a different volatilities. As indicated in the above office action the self induced motility is a very basic natural phenomenon, known in chemistry and prior art (e.g. Silvester et al. US 6,150,318; 2: 5-25), which is a direct result of solutions comprising of liquids ingredients with noticeable

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vapor pressure difference. This self induced volatility is also observed, at times, during the opening of paint containers, wherein the solvent, or thinner solution, tend to exhibit the effect. Therefore this physio-chemical properties of solutions fact does not constitute a hindsight, as mentioned by applicant. De Guertechin's lack of indication of this visual indication is not construed as lack of abovementioned effect. To date, there has been no display of evidence to elucidate differences between the inventions of prior arts and applicant's instant claims. It is noted that arguments of counsel can not take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

B- Applicant's argument regarding claims 7, 8, 10, 13, 15, and 16 is basically focused on the amendment of independent claim 1, and therefore is moot by the aforementioned response.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. M. Reza Asdjodi whose telephone number is (571)270-3295. The examiner can normally be reached on Monday-Friday 8:00-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/
Supervisory Patent Examiner, Art Unit 1796

/M. R. A./
Examiner, Art Unit 1796
02/11/09